

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

MFA.No. 784 of 1999()

OPMV.1943/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD
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APPELLANT:

RAJAN, AGED 32 YEARS, S/O.APPUCHAMI
PADINJARETHARA, MADANPANKALAM,
COYALMANNAM P.O. PALAKKAD.

BY ADV. SRI.K.R.RAGHUNATH

RESPONDENTS:

1. V. KRISHNAN, S/O.VELAYUDHAN
PADINJARETHARA, COYALMANNAM,
PALAKKAD (DRIVER OF VEHICLE NO.KL 9/A
3089) (DL.NO.2332/91)
2. V.SUBRAMANIAN, WEST MANDAPURAMKALAM,
COYALMANNAM, PALAKKAD.
(OWNER OF VEHICLE KL 9/A-3039)
3. NATIONAL INSURANCE CO. LTD.
PALAKKAD, POLICY NO.570705/BI/60/01542/92B
(VALID FROM 31.8.1992 TO 30.8.1993)

BY ADV. SRI.E.M.JOSEPH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 784 of 1999

Dated this the 2nd July, 2007.

J U D G M E N T

The petitioner in O.P.(M.V.)No.1943/1993, on the file of the Motor Accidents Claims Tribunal, Palakkad, is the appellant. The appeal is filed against the award passed by the Tribunal dismissing the claim petition filed by the appellant. On 28.10.1992, the appellant was travelling in an auto rickshaw bearing Registration No.KL-9A/3089. When it reached the place by name, Manamkolam, the auto rickshaw cap sized and the appellant was thrown out. The auto rickshaw fell on the body of the appellant, causing injuries to him. Appellant filed the original petition impleading the driver, owner and insurer of the vehicle. It was alleged that when a boy attempted to cross the road, the driver applied sudden break, causing the accident. It was averred that the driver was driving the autorickshaw in a terrific speed and in a rash or negligent manner. It is argued that because of the application of break, the vehicle capsized. The owner and driver contented that there was no negligence on the part of the driver. It was contented that the accident was an inevitable one. Insurer has not filed any

written statement at all. But, it is seen that the insurer has filed a petition calling upon the owner and driver to produce the driving licence, which was seen produced before the Tribunal. The Tribunal dismissed the application holding that there was no negligence on the part of the driver. Challenging that award, this appeal is filed.

2. The learned counsel appearing for the appellant argued that the finding of the Tribunal that there is no negligence on the part of the driver is without any basis and illegal. It is true that in the original petition itself, it was averred that the accident occurred while the driver applied the break, on seeing a boy crossing the road. But it was also averred that the driver was driving the vehicle in a rash or negligent manner, and in a terrific speed. Mere fact that a pedestrian was crossing the road is not sufficient to stop the vehicle abruptly. The lie of the road, the distance between the vehicle and pedestrian crossing the road are all relevant matters. The scene mahazar shows that at the place accident, the road lies east west, and tarred road was having a width of 4.5 metres and was having road margins on either side. The accident occurred 3.5. metres south from the northern tar end, and one metre from the southern tar end. If the vehicle was coming from east to west , the accident occurred on the

wrong side of the auto rickshaw. Whether there was any other vehicle and why the vehicle had to be stopped suddenly etc. were not explained either by the owner or the driver. The only evidence available is that of the petitioner. The material on record shows that the appellant sustained very serious injuries resulting 40% disability. The Tribunal dismissed the application on the sole ground that the appellant had stated that the driver applied the break on seeing the boy crossing the road. The finding of the Tribunal is perverse and illegal, and liable to be set aside. The matter requires reconsideration. For that purpose, the case has to go back. I set aside the award passed by the Tribunal and remand the matter for fresh disposal, in accordance with law.

3. In the result, the appeal is allowed. The award of the Motor Accidents Claims Tribunal, Palakkad, in O.P.(M.V.) No.1943/1993 is hereby set aside. The matter is remanded to the Tribunal for fresh disposal. The Tribunal is directed to take back O.P. (M.V) No.1943/93 to file and dispose of the same afresh, after giving a reasonable opportunity to the parties to adduce evidence, if so advised.

Parties shall appear before the court below on
27.7.2007.

**K.PADMANABHAN NAIR,
JUDGE**

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 784 of 1999

J U D G M E N T

Dated: 2nd July, 2007.
